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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MARTHA BRIDGES et al.,

Plaintiffs and Appellants,

v.

CITY OF WILDOMAR,

Defendant and Respondent.

E063986

(Super.Ct.No. MCC1300555)

OPINION

APPEAL from the Superior Court of Riverside County. Raquel A. Marquez,
Judge. Affirmed.

David X. Turajski and Stanley K. Southwick for Plaintiffs and Appellants.

Burke, Williams & Sorensen, Thomas D. Jex and Amy E. Hoyt for Defendant and
Respondent.

I

INTRODUCTION

The City of Wildomar,¹ defendant and respondent, became incorporated on July 1, 2008, and also adopted a resolution approving the same general plan as the County of Riverside’s 2002 General Plan, as amended. Almost five years later, in April 2013, plaintiffs and appellants Martha Bridges and John Burkett filed a lawsuit contending the City had failed to adopt a general plan within 30 months of incorporation, citing Government Code section 65360. After a court trial, the court issued a statement of decision, ruling in favor of the City on the issues of the statute of limitations and laches. In a subsequent hearing, the trial court denied plaintiffs’ motion for new trial for the same reasons.

We agree with the trial court that the statute of limitations bars the action. Government Code section 65009 mandates that any action challenging Wildomar’s decision to adopt a general plan must be brought within 90 days of the general plan’s adoption on July 1, 2008. Furthermore, the doctrine of laches also bars the action because plaintiffs waited almost five years to challenge the City’s adoption of a general plan.

Based on our independent review, we affirm the judgment. (*Heavenly Valley v. El Dorado County Bd. of Equalization* (2000) 84 Cal.App.4th 1323, 1334 [questions of statutory construction]; *William L. Lyon & Associates, Inc. v. Superior Court* (2012) 204

¹ Hereinafter “City” or “Wildomar.”

Cal.App.4th 1294, 1304, and *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432 [statute of limitations]; *Bakersfield Elementary School Teachers Assn. v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1274, and *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 605 [laches where facts are not disputed]; *Whitlock v. Foster Wheeler, LLC* (2008) 160 Cal.App.4th 149, 158-159 [motion for new trial].)

II

FACTUAL AND PROCEDURAL BACKGROUND

Wildomar's Incorporation in 2008

The material facts of this appeal are generally undisputed. Wildomar is a municipal corporation formed and organized as a general law city under the laws of the State of California, effective July 1, 2008. As part of the incorporation process, notice was given and a “Special First Meeting of the Wildomar City Council” was conducted on July 1, 2008. According to the “Affidavit of Posting,” “the foregoing notice of special first meeting was delivered personally or by mail to each council member of the City of Wildomar and to each local newspaper of general circulation, radio or television station requesting notice in writing, and was posted at [three Wildomar locations within] 72 hours in advance of the special first meeting.

At the inaugural meeting, Wildomar enacted Resolution No. 08-01 entitled “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADOPTING BY REFERENCE ALL APPLICABLE COUNTY OF RIVERSIDE RESOLUTIONS AS CITY OF WILDOMAR RESOLUTIONS.”

Wildomar's decision to adopt the County's general plan had been publicly formulated over many years before actual incorporation.² Resolution No. 08-01 includes three recitals: (1) that as a newly incorporated city, Wildomar desired to "continue the existing regulatory and management scheme in providing services to City residents as were previously provided to them by the County of Riverside"; (2) that the County had "approved by resolution Specific Plans and related matters for projects located in whole or in part within the incorporated area of the City (collectively, the 'County resolutions')"; and (3) that the Council believed it was in the City's "best interest to continue such County Resolutions." Since July 1, 2008, Wildomar has made numerous unchallenged land use decisions based on its adoption of the County's general plan.

Adoption of Oak Creek Project in 2012

In November 2012, Wildomar released a draft Environmental Impact Report (EIR) for the Oak Creek residential project. Plaintiff Bridges submitted written comment contending that Wildomar had *not* adopted a general plan after incorporation. Wildomar countered it had done so through operation of Resolution No. 08-01. Wildomar approved the Oak Creek project in May 2013.

The Lawsuit

After plaintiffs filed their complaint, they brought a motion for summary judgment, which the court denied. After granting a motion for a bifurcated trial on the City's affirmative defenses of statute of limitations and laches, the trial court conducted a

² Although plaintiffs contend this information is irrelevant, they do not dispute it is true.

bench trial based on written briefs.

On April 27, 2015, the court issued its statement of decision, ruling that Government Code section 65009's 90-day statute of limitations and the doctrine of laches bar the action. The court expressly found that the language of Resolution No. 08-01 necessarily included the County's resolutions approving and amending its own general plan. The City's adoption of Resolution No. 08-01 triggered Government Code section 65009's 90-day statute of limitations. The court also found that plaintiffs had both actual and constructive notice of the City's adoption of its General Plan and the City's subsequent approvals made in reliance on Resolution No. 08-01. Nevertheless, plaintiffs did not file their lawsuit within the 90-day period. Plaintiffs did not even file within 90 days of November 2012, the date Bridges claimed to have actual knowledge about the General Plan's adoption. Finally, the court found that the lawsuit was not brought based on the complete absence of a general plan, but was instead a "challenge to the procedure and methods used by City to 'formally' adopt its General Plan."

With respect to laches, the court found that, because the statute of limitations ran on September 30, 2008, plaintiffs' delay was unreasonable and prejudiced the City. Bridges did not explain why she did not or could not learn of the General Plan's adoption before November 2012. Burkett offered no explanation whatsoever for his delay. The court found that the City was prejudiced because it had relied upon the validity of the general plan for several years and delay and uncertainty would impair the City's ability to govern as well as undermine the Legislature's purpose in adopting Government Code section 65009.

After the court entered judgment in the City’s favor, plaintiffs filed a motion for a new trial. (Code Civ. Proc., § 657, subds. (6) and (7).) At the hearing, the court observed that the new trial motion was effectively a motion for reconsideration because it was based on the same grounds of statute of limitations and laches. The court denied the motion for the same reasons as it granted judgment to the City. Plaintiffs appeal both the judgment and the denial of the new trial motion.

III

STATUTE OF LIMITATIONS

The trial court issued a detailed statement of decision based on undisputed facts.³ Its judgment is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) All reasonable inferences and all conflicts in evidence will be resolved in favor of the judgment. (*In re Marriage of Hoffmeister* (1987) 191 Cal.App.3d 351, 358.) Appellants bear the burden of presenting argument and authority to prove each alleged error, even on issues subject to de novo review. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956; *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466.)

When analyzing the applicability of section 65009’s limitation period, the focus is on the “gravamen of the petition.” (*Honig v. San Francisco Planning Dept.* (2005) 127 Cal.App.4th 520, 524.) The court “must determine what specific governmental act” the plaintiffs are challenging. (*County of Sonoma v. Superior Court* (2010) 190 Cal.App.4th 1312, 1324.) The gravamen of this action is plaintiffs’ contention that the City did not

³ The parties’ argument about whether there is any factual dispute is really a dispute about how the facts should be interpreted.

follow the correct procedure in adopting its General Plan and as a result of this alleged procedural error, the City has no valid general plan. The trial court concluded Government Code section 65009's 90-day statute of limitations bars this action. We agree.

Government Code section 65009 creates a short 90-day statute of limitations to challenge a city's decision to adopt a general plan. The Legislature deliberately selected a short limitations period, finding that a housing crisis exists in California, making it "essential to reduce delays and restraints upon expeditiously completing housing projects." (Gov. Code, § 65009, subd. (a)(1).) The Legislature further declared that legal actions challenging land use decisions have a chilling effect on "the confidence with which property owners and local governments can proceed with projects." (Gov. Code, § 65009, subd. (a)(2).) The legislative purpose, in light of the housing crisis and the chilling effect of litigation, was "to provide certainty for property owners and local governments" regarding land use decisions. (Gov. Code, § 65009, subd. (a)(3).) The "short limitations period . . . serves the important legislative purpose of permitting the rapid resolution of legal challenges to local zoning and planning decisions." (*Honig v. San Francisco Planning Department*, *supra*, 127 Cal.App.4th at p. 528; *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 388.) Section 65009 thus states that "no action or proceeding" may be brought to "attack, review, set aside, void, or annul the decision of a legislative body to adopt . . . a general . . . plan" unless the action is filed and served "within 90 days after the legislative body's decision." (Gov. Code, § 65009, subd. (c)(1)(A).)

Here, Wildomar adopted its General Plan on July 1, 2008, when it adopted Resolution No. 08-01. The 90-day limitations period ended on October 1, 2008. Plaintiffs filed this action on April 22, 2013, nearly five years too late to challenge the adoption of a general plan. (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors*, *supra*, 91 Cal.App.4th at pp. 388-389; *A Local & Regional Monitor v. City of Los Angeles* (1993) 16 Cal.App.4th 630, 648.)

We reject plaintiffs’ effort to rely on the narrow exception to the 90-day limitations period that applies if “an action is brought based upon the complete absence of a general plan.” (Gov. Code, § 65009, subd. (c)(1)(A).) The trial court expressly found that plaintiffs’ lawsuit is based on their claim that the City improperly adopted its General Plan. Plaintiffs contend that the City did not use the correct procedure to adopt its General Plan, specifically the City’s adoption of Resolution No. 08-01. Plaintiffs expressly allege that they “bring this action in order to obtain a judicial declaration that Resolution No. 08-01 adopting by reference all applicable Riverside County resolutions as WILDOMAR resolutions does not suffice for the legal requirement that a new city adopt a general plan within 30 months following incorporation, and for a writ of mandate compelling WILDOMAR to formulate and adopt a valid general plan” Plaintiffs also allege that the City has “failed to validly adopt a general plan” because Resolution No. 08-01 does not comply with the legal requirements for adopting a general plan.

All of plaintiffs’ appellate arguments focus on whether Wildomar followed correct procedures, including proper notice and hearing, when it adopted its General Plan upon incorporation. However, these arguments concern the methods that Wildomar used to

adopt its General Plan, and not the purported complete absence of a general plan.

Instead, the undisputed facts establish that the City adopted a general plan on July 1, 2008, which it has relied upon ever since.

Plaintiffs' interpretation of the "complete absence" exception is untenable. By its plain meaning, the term "complete absence" means the total lack of any general plan at all, whether valid or invalid. It does not mean where a city adopts a general plan but allegedly does not provide the proper notice or use the correct procedure. According to plaintiffs, "complete absence" of a general plan does not mean the total lack of a plan but rather the lack of a legally valid plan—an interpretation not consistent with the statute's plain language. (*Davidson v. County of San Diego* (1996) 49 Cal.App.4th 639, 648.) Furthermore, plaintiffs' interpretation would render the 90-day statute of limitations a nullity. (*Poway Unified School Dist. v. Superior Court* (1998) 62 Cal.App.4th 1496, 1503.)

We also reject plaintiffs' reliance on *City of Coachella v. Riverside County Airport Land Use Com.* (1989) 210 Cal.App.3d 1277 and *Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757. Neither case involves the application of the statute of limitations in a challenge to a city's adoption of a general plan. The inescapable conclusion is that this lawsuit is a challenge to the procedure the City used to adopt its General Plan. Because plaintiffs did not challenge the 2008 General Plan until April 22, 2013, the action is time-barred under section 65009's 90-day statute of limitations.

IV

LACHES

The trial court also found, based on undisputed facts, plaintiffs' action was barred by the doctrine of laches. Laches is found where there is (1) delay in asserting a claim or right; (2) the delay is unreasonable or inexcusable; and (3) there is prejudice to the party asserting the laches defense. (*Magic Kitchen LLC v. Good Things Internat., Ltd.* (2007) 153 Cal.App.4th 1144, 1157 [laches barred an action, subject to a four-year statute of limitations, brought 10 years after cause of action accrued].) The trial court's finding, whether reviewed for abuse of discretion or substantial evidence, is entitled to "considerable deference." (*Department of Parks & Recreation v. State Personnel Bd.* (1991) 233 Cal.App.3d 813, 830-831.) Reversal of a discretionary ruling on laches is a "daunting task." (*Dreamweaver Andalusians, LLC v. Prudential Ins. Co. of America* (2015) 234 Cal.App.4th 1168, 1171.)

The trial court found that plaintiffs unreasonably delayed filing their lawsuit, thereby prejudicing the City. Overwhelming evidence supports that determination. A delay of nearly five years is presumed untimely. (*Dreamweaver Andalusians, LLC v. Prudential Ins. Co. of America, supra*, 234 Cal.App.4th at p. 1171.) Furthermore, the delay was unreasonable and inexcusable. After a lengthy and public preincorporation process, Resolution No. 08-01 was adopted at a noticed public meeting. In the years after adoption, the City has repeatedly relied on the validity of its General Plan to approve land use projects and pass ordinances. Bridges admits that she has known all these facts no later than November 2012 and yet plaintiffs waited another five months to file their

action. Furthermore, litigants are deemed to have constructive notice of ordinances and resolutions, including Resolution No. 08-01, and must act with reasonable diligence.

(*Utility Cost Management v. Indian Wells Valley Water Dist.* (2001) 26 Cal.4th 1185, 1197.)

There is also no question the delay prejudiced the City. Prejudice occurs where the defendant shows that it took action or suffered consequences because a lawsuit was not filed promptly. (*Magic Kitchen LLC v. Good Things Internat. Ltd., supra*, 153 Cal.App.4th at pp. 1161-1162.) Since 2008, the City has repeatedly relied on the General Plan in its land use decisions. It would wreak havoc on the City's planning decisions to allow an attack upon the General Plan almost five years after its adoption. Given the considerable evidence supporting the laches finding, the trial court's ruling is neither a manifest injustice, an abuse of discretion, or a violation of public policy. Allowing plaintiffs to pursue this belated challenge would instead nullify the strong public policy embodied in section 65009 that a challenge to the adoption of a general plan must be brought promptly.

V

MOTION FOR NEW TRIAL

At the hearing on plaintiffs' motion for new trial, the trial court commented the motion was more properly regarded as a motion for reconsideration because plaintiffs had argued at trial there was no effective decision adopting the general plan and the court found their claims were barred by the 90-day statute of limitations and laches. Therefore, the trial court concluded plaintiffs' motion should be denied for the same reasons. On

appeal, plaintiffs do not offer any contrary argument or authority. Clearly, the trial court did not abuse its discretion in denying the new trial motion. (*Whitlock v. Foster Wheeler, LLC, supra*, 160 Cal.App.4th at pp. 158-159.)

VI

DISPOSITION

Plaintiffs' claims are barred by the statute of limitations and laches. The motion for new trial was properly denied.

We affirm the judgment. The City of Wildomar, the prevailing party, shall recover its costs on appeal.

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CODRINGTON

J.

We concur:

RAMIREZ

P. J.

HOLLENHORST

J.